

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DEL MAGUEY LTD. CO.,

Plaintiff,

vs.

CIVIL NO. 09-1106 BB/LFG

ANSLEY J. COALE, JR. et al.,

Defendants.

**ORDER RETURNING LETTERS ROGATORY**

THIS MATTER is before the Court *sua sponte*. On July 27, 2010, Plaintiff submitted three copies of Letters Rogatory to the Court as part of a procedure under the Hague Convention to obtain service of process on Defendant Destileria Los Danzantes. Plaintiff requested the Court to enter its signature on pages 2 and 4 of the Letters Rogatory, and requested having the letters conformed and returned. The proposed Letters Rogatory are being returned unsigned and unfiled.

On July 14, 2010, the Court entered an Order Denying Without Prejudice Plaintiff's Motion to Extend Time for Service [Doc. 35]. The Court previously granted Plaintiff an extension of time of nearly three months, until July 22, 2010, within which to effect service of process and provide the Court with proof of service. On July 13, 2010, Plaintiff filed a motion to extend the time for service of process [Doc. 34]. The Court denied the request stating:

In its current motion, Plaintiff offers no information whatsoever as to what steps have been taken since April 22, 2010 to effect service and move this matter any closer to service. Rather, it offers the identical rationalization for extending the time for service that it offered in response to the Court's Order to Show Cause. Unlike before, the Court cannot say that Plaintiff has demonstrated diligence. Thus, without any justification for granting an extension of time for service, the Court denies Plaintiff's motion.

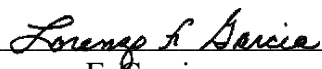
The Court will allow Plaintiff to file a revised motion within ten days, which should detail any steps Plaintiff has taken to effect service since April 22, 2010. If the Court determines that Plaintiff has demonstrated diligence, a brief extension will be granted. If the Court determines that no significant steps have been taken to perfect service, the motion will be denied and the Court will recommend dismissal of the case against Defendant Destileria Los Danzantes without prejudice.

Plaintiff filed no revised motion. Rather than demonstrating that it has been diligent in seeking to obtain service of process on Defendant Destileria Los Danzantes, Plaintiff writes to the Court requesting that it sign the Letters Rogatory and return conformed copies.

The Court declines to sign the Letters because, in doing so, it would be tacitly approving an out-of-time service on Defendant Destileria Los Danzantes. The time for service expired on July 22, 2010, and Plaintiff has simply not demonstrated any steps taken since early Spring to effect service.

Additionally, the Letters Rogatory sent to the Court were apparently copied from a domestic relations lawsuit, as the Letters advise proposed Defendant Destileria Los Danzantes “You are hereby informed that you are being notified of the institution against you of divorce proceedings.” (Letters Rogatory, p. 3). Quite obviously, this is not a divorce case.

Accordingly, the Court returns the Letters Rogatory unsigned and unfiled.

  
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Lorenzo F. Garcia  
United States Magistrate Judge